

CONDENSED COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSIAH KUENZI, : CIVIL ACTION
Plaintiff :

vs. :

EUROSPORT CYCLES, INC. :

And :

DON MURRAY d/b/a :

EUROSPORT CYCLES, INC. :

And :

CAPITAL ONE AUTO FINANCE, :
INC. :

And :

JOHN DOES 1-10, :

Defendants : NO. 08-3906

- - -

Monday, July 26, 2010

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Oral deposition of JOSIAH KUENZI held
at WEISBERG LAW, P.C., 7 South Morton Avenue,
Morton, PA, on the above-mentioned date,
commencing at 9:30 a.m., before Kimberly Pepper,
Professional Court Reporter and Notary Public of
the Commonwealth of Pennsylvania.

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1500 Market Street

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(215) 568-5599

Josiah Kuenzi

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S:</p> <p>2</p> <p>3 WEISBERG LAW, P.C.</p> <p>4 BY: MATTHEW B. WEISBERG, ESQUIRE</p> <p>5 7 South Morton Avenue</p> <p>6 Morton, PA 19070</p> <p>7 (610) 690-0801</p> <p>8 Counsel for the Plaintiff</p> <p>9</p> <p>10 MCNEES, WALLACE & NURICK, LLC</p> <p>11 BY: DEVIN J. CHWASTYK, ESQUIRE</p> <p>12 100 Pine Street</p> <p>13 Harrisburg, Pennsylvania 19108</p> <p>14 (717) 237-5482</p> <p>15 Counsel for the Defendant</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 DIRECTIONS NOT TO ANSWER:</p> <p>4 PAGES: None</p> <p>5</p> <p>6 REQUESTS FOR DOCUMENTS OR INFORMATION:</p> <p>7 PAGES: None</p> <p>8</p> <p>9 STIPULATIONS AND/OR STATEMENTS:</p> <p>10 PAGES: None</p> <p>11</p> <p>12 MARKED QUESTIONS:</p> <p>13 PAGES: None</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 JOSIAH KUENZI</p> <p>5</p> <p>6 EXAMINATION BY MR. CHWASTYK 5</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 (It is hereby stipulated by and</p> <p>2 between counsel that the reading, signing,</p> <p>3 sealing, certification and filing of the within</p> <p>4 deposition are hereby waived. All objections, except</p> <p>5 as to the form of the question, are reserved until</p> <p>6 time of trial.)</p> <p>7</p> <p>8 ... JOSIAH KUENZI, having been</p> <p>9 first duly sworn, was examined and testified as</p> <p>10 follows:</p> <p>11 E X A M I N A T I O N</p> <p>12 BY MR. CHWASTYK:</p> <p>13 Q. Can you state your name for the record, sir.</p> <p>14 A. Josiah Kuenzi.</p> <p>15 Q. Josiah Kuenzi?</p> <p>16 A. Yes.</p> <p>17 Q. Thank you. What is your address?</p> <p>18 A. I have a new address. It's 1920 Hemlock</p> <p>19 Road, Jeffersonville, PA, 19403.</p> <p>20 Q. When did you move there?</p> <p>21 A. About three weeks ago.</p> <p>22 Q. I'll ask you questions. For her convenience</p> <p>23 it's easier for her to keep the record if you</p> <p>24 wait until I finish my question before you start</p>

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<p style="text-align: right;">Page 6</p> <p>1 your answer, otherwise, we talk over each other</p> <p>2 and it gets difficult. So I'll do my best to que</p> <p>3 you of that.</p> <p>4 So what was your prior address</p> <p>5 before you moved to Jeffersonville? ?</p> <p>6 A. It was 369 Beach Street, Pottstown PA, 19464.</p> <p>7 Q. How long ago did you move to Jeffersonville?</p> <p>8 A. About three weeks ago.</p> <p>9 Q. How long have you been driving motorcycles?</p> <p>10 A. Probably about five years.</p> <p>11 Q. In that five years have you ever owned your</p> <p>12 own motorcycle?</p> <p>13 A. Yes, I have.</p> <p>14 Q. How many motorcycles have you bought?</p> <p>15 A. Three.</p> <p>16 Q. So in 2007 I understand from your Complaint</p> <p>17 that you attempted to purchase a 2003 BMW</p> <p>18 motorcycle; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. How did you come across that motorcycle and</p> <p>21 decide you wanted to purchase it?</p> <p>22 A. I found the dealership through eBay</p> <p>23 advertisements, and I went down to see them in</p> <p>24 New Jersey.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. With a loan.</p> <p>2 Q. That was the loan from Capital One Auto</p> <p>3 Finance?</p> <p>4 A. Correct.</p> <p>5 Q. How did you hear about Capital One? How did</p> <p>6 you come across their loan offer?</p> <p>7 A. Just searching loans on the Internet.</p> <p>8 Q. So you went to Capital One Auto Finance's</p> <p>9 website?</p> <p>10 A. I believe I went to a website that would</p> <p>11 search for loans. I forget which one it was, but</p> <p>12 they directed me to Capital One.</p> <p>13 Q. Did you have to fill something out on the</p> <p>14 Internet to get information about the loan? How</p> <p>15 did the process start?</p> <p>16 A. As I recall, I filled out a pre-application,</p> <p>17 and then I believe I spoke with somebody on the</p> <p>18 phone.</p> <p>19 Q. Do you remember when you filled out the</p> <p>20 pre-application, what date, when approximately?</p> <p>21 A. It would have been right after the -- right</p> <p>22 around the 1st of November.</p> <p>23 Q. In your Complaint, and I'll note it alleges</p> <p>24 that you entered into the purchase agreement for</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Had you ever dealt with this dealership</p> <p>2 before?</p> <p>3 A. No, I didn't.</p> <p>4 Q. You just found it on the Internet?</p> <p>5 A. Correct.</p> <p>6 Q. Did anybody recommend the dealership to you?</p> <p>7 Did you have any conversations with anyone else</p> <p>8 who had purchased motorcycles from them in the</p> <p>9 past?</p> <p>10 A. Not until after I made the purchase.</p> <p>11 Afterwards we had discussions with other people.</p> <p>12 Q. So you went down to New Jersey. Where was</p> <p>13 the dealership located?</p> <p>14 A. Middlesex, New Jersey.</p> <p>15 Q. At Eurosport Cycles?</p> <p>16 A. Correct.</p> <p>17 Q. When you visited, did you view the motorcycle</p> <p>18 there at the dealership?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Was that the one that was there at the</p> <p>21 dealership, that was the actual model that you</p> <p>22 intended to purchase?</p> <p>23 A. Correct.</p> <p>24 Q. How did you plan to pay for the motorcycle?</p>	<p style="text-align: right;">Page 9</p> <p>1 the motorcycle on October 21st, 2007?</p> <p>2 A. Correct.</p> <p>3 Q. Would that have been the date that you</p> <p>4 visited the dealership in New Jersey?</p> <p>5 A. No.</p> <p>6 Q. Did you go down to New Jersey before or after</p> <p>7 you signed the purchase agreement?</p> <p>8 A. I went down to New Jersey the same day I</p> <p>9 signed the purchase agreement which he sent the</p> <p>10 one dated the 31st to me by e-mail, and then I</p> <p>11 went down on the 4th to view the motorcycle and</p> <p>12 write the check.</p> <p>13 Q. So would it have been between October 31st</p> <p>14 and November 4th when you would have applied with</p> <p>15 Capital One?</p> <p>16 A. As I recall, yes.</p> <p>17 Q. Do you recall what was said during your</p> <p>18 telephone call at Capital One?</p> <p>19 A. No.</p> <p>20 Q. Do you remember what sort of information you</p> <p>21 had to fill out for the pre-application on the</p> <p>22 Internet?</p> <p>23 A. I don't recall. I would imagine just basic</p> <p>24 name and address.</p>

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<p style="text-align: right;">Page 10</p> <p>1 MR. WEISBERG: Don't imagine. 2 He doesn't want you to imagine either. If you 3 have a memory no matter how faint it is, you can 4 say that, but don't guess. 5 THE WITNESS: Okay. 6 BY MR. CHWASTYK: 7 Q. So you said you went back there on November 8 4th and dropped off a check for the motorcycle; 9 is that right? 10 A. Right. 11 Q. Was that check the blank check for the auto 12 loan that you received from Capital One? 13 A. Correct. 14 Q. Do you remember when you received that blank 15 check in the mail? Did you receive the check in 16 the mail from Capital One? 17 A. Yes. 18 Q. Do you know when you received the blank 19 check? 20 A. Either the day before or on November 4th. 21 Q. Do you remember if Capital One does offer an 22 option where you can pay a few extra dollars for 23 overnight mail for the blank check? Do you 24 remember if you paid for the Express Mail?</p>	<p style="text-align: right;">Page 12</p> <p>1 attorney in discovery. 2 Would you take a look at the 3 front of this document. I can see it has your 4 address and your former address in Pottstown, and 5 it says Blank Check Owner's Manuel. Do you 6 recognize this document? 7 A. Yes. 8 Q. Where do you recognize this from? 9 A. From -- I would have received it sometime 10 after applying for the loan. 11 Q. I'll direct your attention to page two of 12 this document. The bottom of the page we have a 13 check there. It's now marked void. Do you 14 recognize that check? 15 A. Only from the documentation submitted. I 16 don't actually recall seeing a check that was 17 stamped void like that. 18 Q. I'm not implying that when you received the 19 check it would have been marked void. 20 A. Right. 21 Q. It was marked void now that we're -- 22 A. Right. 23 Q. Does that look like the check that you used 24 to purchase the motorcycle?</p>
<p style="text-align: right;">Page 11</p> <p>1 A. No. 2 MR. WEISBERG: No, you don't 3 remember or no, you didn't? 4 THE WITNESS: No, I didn't pay 5 for Express Mail. 6 BY MR. CHWASTYK: 7 Q. Okay. When you received the check, do you 8 remember what the packet of materials that you 9 received looked like? 10 A. It was just a check. 11 Q. Was there an envelope? 12 A. In an envelope, correct. 13 Q. What was in the envelope? 14 A. The check. 15 Q. Just the blank check? 16 A. Yes. 17 Q. Mark that as Kuenzi 1, please. 18 (At this time, Kuenzi Exhibit 19 Number 1 was marked for identification.) 20 BY MR. CHWASTYK: 21 Q. Mr. Kuenzi, I'm showing you a document that 22 is taken from Exhibit 3 to docket number 18 in 23 the court's docket here which is a packet of 24 materials that Capital One had submitted to your</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes, it does. 2 Q. Okay. Mr. Kuenzi, I'll represent to you that 3 this Blank Check Owner's Manual is a packet of 4 the materials that comes bound together in 5 essentially this form. This is a slightly 6 different version of the same document, and we 7 will mark this as Kuenzi 2. 8 I'll just note for the record 9 this is an eight and a half x eleven sheet of 10 paper that is folded in half and has terms or 11 materials appearing on each half page and 12 includes on the second page a slightly different 13 version of the blank check. 14 As I said, this is a newer 15 version. I tried to get the older version of the 16 blank check packet, but does this bound version 17 look similar to the packet of materials that you 18 received with your blank check for your 19 motorcycle loan? 20 A. I don't believe so. 21 Q. You don't recognize that format? 22 A. No. 23 Q. Okay. Mark that Kuenzi 2 and mark this 24 Kuenzi 3.</p>

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<p style="text-align: right;">Page 14</p> <p>1 (At this time, Kuenzi Exhibits 2 2 and 3 were marked for identification.) 3 BY MR. CHWASTYK: 4 Q. Bear with me for one second, please. Mr. 5 Kuenzi, Exhibit 3 is a two-page document. These 6 are documents that your attorney produced to the 7 court as Exhibit 1 to docket number 25. If you 8 take a look, do you recognize that document? 9 A. Yes. 10 Q. What is this? 11 A. It's the check. 12 Q. This is the blank check auto loan that you 13 used to purchase the motorcycle from Eurosport 14 Cycles? 15 A. Correct. 16 Q. I want you to just compare Exhibit 1 which 17 was the packet that I gave you and this Exhibit 18 3, the two checks. The check appearing on the 19 second page of Exhibit 1 which is now marked void 20 is serial number 4910305. I'll note Exhibit 3 of 21 the check also bears the serial number 4910305. 22 So it appears to me, sir, that this is the same 23 check that you eventually wrote and we have it in 24 Exhibit 1 as part of this Blank Check Owner's</p>	<p style="text-align: right;">Page 16</p> <p>1 it appears, and I don't know if your photocopy is 2 bad, but that the numbers underneath the check 3 number are different as well as the date void 4 after appears different as well. 5 MR. CHWASTYK: I'm not sure I 6 can read the avoid after date well enough to 7 agree with you. I think that may say 12/15/2007 8 there. It's very small. 9 THE WITNESS: Is this the only 10 copy that we have of the original check? I can 11 get a better, clearer copy of that. I might have 12 one. 13 MR. CHWASTYK: Okay. 14 MR. WEISBERG: Well, it's not 15 actually the -- well, I guess it is. 16 THE WITNESS: But this 17 definitely looks weird. It looks like they are 18 marked out. They are not even numbers it looks 19 like. 20 MR. WEISBERG: Well, you are 21 referring to the codes at the bottom. That would 22 usually indicate the account number on the second 23 page of Kuenzi 1 it's deleted. 24 THE WITNESS: Right.</p>
<p style="text-align: right;">Page 15</p> <p>1 Manual. 2 Does that refresh your 3 recollection at all as to whether you received 4 the Blank Check Owner's Manual along with the 5 check that you eventually wrote to Eurosport 6 Cycles? 7 A. No. 8 Q. All right. You said earlier that you did 9 recognize the Blank Check Owner's Manual as 10 materials that you received at some point from 11 Capital One. If you didn't receive these with 12 the check, when do you think that you saw these 13 before? When do you think you received them from 14 Capital One? 15 A. After I wrote the check, I got another packet 16 of information and a letter, you know, thank you 17 for. 18 Q. I'm marking Exhibit 4. 19 (At this time, Kuenzi Exhibit 4 20 was marked for identification.) 21 MR. WEISBERG: Can we let the 22 record reflect that in comparing Exhibit Kuenzi 3 23 to the second page of Kuenzi 1 which is the 24 voided blank check and the check that was signed</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. WEISBERG: Whereas, on the 2 check that you signed it's obviously not. 3 There's also more spots for them as well. There 4 is also no VIN number on the check that you 5 signed. I mean there is other discrepancies, but 6 we will go forward. 7 BY MR. CHWASTYK: 8 Q. Turn your attention to the new Exhibit 4. 9 You said you received a letter and another packet 10 of materials. Does this look familiar to you? 11 A. Yes. 12 Q. Is this the letter that you mentioned 13 receiving? 14 A. Yes. 15 Q. This is dated November 9th. So that would 16 have been approximately four days after you 17 purchased the motorcycle; is that right? 18 A. Correct. 19 Q. Okay. You testified that you received the 20 blank check just by itself in an envelope; is 21 that correct? 22 A. As I recall, yes. 23 Q. Did you keep a copy of the check or the 24 envelope that it came in?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. No. I have an electronic copy. That is</p> <p>2 about it.</p> <p>3 Q. You received no instructions whatsoever with</p> <p>4 the check, no other materials that explained how</p> <p>5 to use it, how it could be used for, nothing?</p> <p>6 A. I don't recall.</p> <p>7 Q. So you wrote a check on November 4th for the</p> <p>8 motorcycle. Did you drive the motorcycle home</p> <p>9 that same day?</p> <p>10 A. No.</p> <p>11 Q. Why didn't you take the motorcycle with you</p> <p>12 when you left on November 4th?</p> <p>13 A. Because he needed four to six weeks to get it</p> <p>14 in working order.</p> <p>15 Q. Was it a used motorcycle?</p> <p>16 A. Yes.</p> <p>17 Q. When you say he needed four to six weeks to</p> <p>18 get it in working, order who is the he you</p> <p>19 referred to?</p> <p>20 A. Don Murray. Donald Murray.</p> <p>21 Q. I'll ask you to clarify for me that. We have</p> <p>22 there's two defendants that you've named,</p> <p>23 Eurosport Cycles in New Jersey and then Don</p> <p>24 Murray doing business as Eurosport Cycles located</p>	<p style="text-align: right;">Page 20</p> <p>1 conversations go on for?</p> <p>2 A. Probably until about January or February of</p> <p>3 2008.</p> <p>4 Q. Okay. What happened then? Did you stop</p> <p>5 calling or did he stop taking your calls?</p> <p>6 A. No. Then I said, well, I have to take action</p> <p>7 if you are not going to get me -- I either need</p> <p>8 my money back or need something here to happen</p> <p>9 because I can't keep going on forever. I think</p> <p>10 also Capital One called for the title which they</p> <p>11 never received from him.</p> <p>12 Q. Just to be clear, you found Capital One's ad</p> <p>13 on the Internet and applied for the loan. As far</p> <p>14 as you know, there is no connection between</p> <p>15 Eurosport Cycles, Don Murray and Capital One?</p> <p>16 A. Just that that was the loan company that was</p> <p>17 used for the financing.</p> <p>18 Q. You used Capital One. That was your choice;</p> <p>19 correct? You found them over the Internet, chose</p> <p>20 to use them?</p> <p>21 A. I think Don recommended it but...</p> <p>22 Q. So January, February Capital One calls</p> <p>23 looking for the title. You are still getting</p> <p>24 excuses from Mr. Murray. What happened then?</p>
<p style="text-align: right;">Page 19</p> <p>1 in Cleveland, Ohio.</p> <p>2 Was Don Murray the owner of</p> <p>3 Eurosport Cycles?</p> <p>4 A. Yes.</p> <p>5 Q. So he told you he needed four to six weeks</p> <p>6 before the motorcycle would be in working order.</p> <p>7 What happened next?</p> <p>8 A. Well, after four to six weeks it was around</p> <p>9 Christmastime, he was on vacation, needed more</p> <p>10 time so it just went on, you know, from there.</p> <p>11 Q. You said it went on from there. What do you</p> <p>12 mean?</p> <p>13 A. More excuses about why it wasn't ready.</p> <p>14 Q. When was the last communication you had with</p> <p>15 Mr. Murray or with Eurosport Cycles?</p> <p>16 A. Last year.</p> <p>17 Q. 2009?</p> <p>18 A. Yes.</p> <p>19 Q. Well, we will go back. Go back to Christmas</p> <p>20 of 2007. He's continuing to give you more</p> <p>21 excuses. How often are you talking with Mr.</p> <p>22 Murray?</p> <p>23 A. At least once a week, sometimes more.</p> <p>24 Q. How long did those regular weekly</p>	<p style="text-align: right;">Page 21</p> <p>1 Did you go to talk to your lawyer at that point?</p> <p>2 Did you continue to talk to Mr. Murray?</p> <p>3 A. I went to Mr. Weisberg.</p> <p>4 Q. Okay. But you did say you spoke to Mr.</p> <p>5 Murray in 2009. Do you remember what</p> <p>6 conversations you had with them later in 2009?</p> <p>7 A. Yes. At the bankruptcy proceedings when I</p> <p>8 tried to see if there was any way I could get at</p> <p>9 least the bike in the condition that it was, but</p> <p>10 since nobody had the title and he kept the title,</p> <p>11 the only thing I had was the bill of sale. So</p> <p>12 they said that whoever had it, since I didn't</p> <p>13 have the title, it wasn't mine so.</p> <p>14 Q. So Mr. Murray took \$7500.00 from the Capital</p> <p>15 One blank check loan and never gave you a</p> <p>16 motorcycle?</p> <p>17 A. Correct. Then it went bankrupt and I saw a</p> <p>18 lot of other people's motorcycles, too.</p> <p>19 Q. Now, it's my understanding that you initially</p> <p>20 made some payments on the Capital One loan; is</p> <p>21 that right?</p> <p>22 A. Correct.</p> <p>23 Q. How long did you make payments for?</p> <p>24 A. I don't recall. I would have to look it up,</p>

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<p style="text-align: right;">Page 22</p> <p>1 but I believe I paid around 4,000 of the loan</p> <p>2 until I stopped paying it.</p> <p>3 Q. Okay.</p> <p>4 A. I was usually paying more than the minimum</p> <p>5 because I was just hoping that it would come</p> <p>6 through but...</p> <p>7 Q. Okay. But you still owe I guess</p> <p>8 approximately \$3500.00?</p> <p>9 A. Right.</p> <p>10 Q. You just mentioned that you might have some</p> <p>11 documents related to this at home. I'll ask that</p> <p>12 you just provide those to your attorney here this</p> <p>13 week sometime if it's convenient for you to do</p> <p>14 so.</p> <p>15 A. Okay.</p> <p>16 Q. So I'm at a loss. I understand that you got</p> <p>17 a raw deal and didn't get your motorcycle and</p> <p>18 lost out, that Eurosport took your money; but I'm</p> <p>19 at a loss to understand what you feel Capital One</p> <p>20 may have done wrong here.</p> <p>21 Why are you suing Capital One?</p> <p>22 MR. WEISBERG: Objection. That</p> <p>23 requires a legal conclusion, but you can answer</p> <p>24 the question.</p>	<p style="text-align: right;">Page 24</p> <p>1 the terms and conditions attached to that letter?</p> <p>2 A. Yes.</p> <p>3 Q. Were there any that you found troubling or</p> <p>4 objected to?</p> <p>5 A. No.</p> <p>6 Q. Did you at that point contact Capital One</p> <p>7 with any questions or concerns?</p> <p>8 A. I don't believe so, no.</p> <p>9 Q. Did you ever request to rescind the loan with</p> <p>10 Capital One?</p> <p>11 A. No.</p> <p>12 Q. Do you remember what website it was that you</p> <p>13 used to find the Capital One loan? You said</p> <p>14 there was a website that searched various loan</p> <p>15 sites.</p> <p>16 A. It might have been Lending Tree and then, you</p> <p>17 know, between that and the recommendation from</p> <p>18 Don.</p> <p>19 Q. When you were on Lending Tree or whichever</p> <p>20 website it was, did you compare the terms and</p> <p>21 conditions of Capital One's loans to those of the</p> <p>22 competing offers that you might have seen on that</p> <p>23 website?</p> <p>24 A. I would imagine.</p>
<p style="text-align: right;">Page 23</p> <p>1 THE WITNESS: Because I didn't</p> <p>2 receive the truth and lending, the check.</p> <p>3 BY MR. CHWASTYK:</p> <p>4 Q. Were you troubled at all by the terms of the</p> <p>5 loan? Do you believe they were somehow unfair to</p> <p>6 you?</p> <p>7 A. Not especially.</p> <p>8 Q. If you assert you didn't receive certain</p> <p>9 truth and lending disclosures, had you received</p> <p>10 different or additional disclosures, would that</p> <p>11 have changed your mind about taking out this</p> <p>12 loan?</p> <p>13 A. Possibly.</p> <p>14 Q. What could have changed your mind? You've</p> <p>15 said that you did receive these disclosures after</p> <p>16 along with this November 9th letter, Exhibit 4.</p> <p>17 A. Mainly, obviously, the interest charges and</p> <p>18 finance charges.</p> <p>19 Q. When you filled out your application on the</p> <p>20 Internet, did it at that time tell you what your</p> <p>21 interest rate would be?</p> <p>22 A. I don't recall.</p> <p>23 Q. When you received the November 9th, 2007</p> <p>24 letter, it's marked as Kuenzi 4, did you review</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. You imagine that you did compare the terms?</p> <p>2 A. Yes.</p> <p>3 Q. And you chose Capital One?</p> <p>4 A. Right.</p> <p>5 Q. So at that time you felt the terms and</p> <p>6 conditions offered by the Capital One loan, were</p> <p>7 those better than those offered by the competing</p> <p>8 loans?</p> <p>9 A. Correct.</p> <p>10 Q. Are you married?</p> <p>11 A. Yes.</p> <p>12 Q. How long have you been married for?</p> <p>13 A. Five years as of August 20th so I'm not quite</p> <p>14 five years.</p> <p>15 Q. Congratulations slightly in advance on your</p> <p>16 anniversary.</p> <p>17 Do you recall if your wife or</p> <p>18 anyone else saw the blank check auto loan when</p> <p>19 you received it before you wrote the check to the</p> <p>20 dealership?</p> <p>21 A. No.</p> <p>22 Q. Do you have any plans to pay Capital One the</p> <p>23 \$3500.00 that remains due on the loan?</p> <p>24 A. No.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. How were you injured by the alleged failure 2 to provide these truth and lending act 3 disclosures? What harm have you suffered? 4 A. Well, just financial mainly and possibly 5 credit. 6 Q. What financial injury have you suffered 7 because they allegedly didn't provide the truth 8 and lending disclosures? 9 A. Just the losses of the loan itself and what I 10 paid out on it. 11 Q. You actually received \$7500.00 from the loan, 12 all right, and you've paid back \$4,000.00 of that 13 and \$3500.00 remains due. How does whether or 14 not you receive the truth and lending disclosures 15 have anything to do with the fact that the dealer 16 stole your money and didn't give you a 17 motorcycle? 18 A. It doesn't. 19 Q. So the fact that you didn't get the truth and 20 lending disclosures doesn't really have anything 21 to do with the \$7500.00 that you lost to Don 22 Murray, does it? 23 A. Well, no, not that. It just means that I 24 took out the loan with Capital One.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. The money that I paid out to Capital One for 2 taking out the loan to Capital One. 3 Q. The \$4,000 that you paid? 4 A. Right. 5 Q. Okay. But that money was supposed to get you 6 a motorcycle? 7 A. Right. 8 Q. It's not Capital One's fault that you didn't 9 get a motorcycle? 10 A. No, that's not what I'm saying. 11 Q. Okay. Have you run a credit check to get 12 your credit report lately from the reporting 13 agencies? 14 A. Several months ago it was okay thus far. 15 With it pending still, I just want to make sure. 16 Q. Your Complaint also alleges that you have 17 suffered annoyance, inconvenience, humiliation, 18 embarrassment and emotional stress. 19 Can you detail what that means? 20 A. I have a whole file in my e-mail of all the 21 craziness and communication and all the 22 ridiculous time that it was taking up from this. 23 Q. Does anybody else know about this dispute? 24 Have you --</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Right. 2 A. Right. 3 Q. But, in fact, you're up \$3500.00 on that 4 loan? You took 7500 and paid 4,000 back? 5 A. Right. 6 Q. You have \$3500.00 of Capital One's money that 7 you haven't paid back. 8 A. Well, I don't have it. Don has it but... 9 Q. Sure. You said you were worried about your 10 credit. Has there been any issues with your 11 credit rating or your credit score that resulted 12 from this loan? 13 A. Not that I recall thus far. I believe they 14 have put it on hold, but it's still pending in 15 the outcome so. 16 Q. Are you aware that Capital One offered to 17 wipe out the remaining balance on this loan in 18 exchange for your settling this lawsuit? 19 A. Yes. 20 Q. Okay. Wouldn't that resolve any issues with 21 regard to creditworthiness or financial injury? 22 A. Not financial injury. 23 Q. Okay. What financial injury are we talking 24 about again?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Yes. 2 Q. Who else knows about it? 3 A. Another attorney that referred me to Mr. 4 Weisberg. 5 Q. Are you embarrassed that that other attorney 6 knows about this? Are you humiliated? I'm 7 trying to understand what the allegation of your 8 Complaint means that you are humiliated by this 9 situation? 10 A. Well, just that it's mainly the money paid 11 out for the loan. 12 Q. Okay. 13 A. And, you know, when I have other things that 14 I could pay, need to pay. 15 Q. But you acknowledge that you did owe the 16 4,000 that you paid? 17 A. Right. 18 Q. And you do owe -- 19 A. Right, and I paid on it without having the 20 motorcycle for how many -- for like a year 21 probably at least in good faith that I would 22 eventually get it. 23 Q. But you acknowledge that it's not Capital 24 One's fault?</p>

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<p>1 A. Right.</p> <p>2 Q. So your loan obligation to Capital One is</p> <p>3 valid whether you got the bike or not? Don</p> <p>4 Murray stole your money and not Capital One. Do</p> <p>5 you acknowledge that?</p> <p>6 A. Yes.</p> <p>7 MR. CHWASTYK: All right.</p> <p>8 That's all I for you. Thank you.</p> <p>9 MR. WEISBERG: Okay.</p> <p>10 ---</p> <p>11 (Whereupon, the deposition of</p> <p>12 Josiah Kuenzi was concluded at 9:56 a.m.)</p> <p>13 ---</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 LAWYER'S NOTES</p> <p>2 PAGE LINE NOTATION</p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p>
<p>Page 31</p> <p>1 CERTIFICATION</p> <p>2 I HEREBY CERTIFY that I am a Court</p> <p>3 Reporter and Notary Public.</p> <p>4 I FURTHER CERTIFY that the witness was</p> <p>5 sworn to testify to the truth.</p> <p>6 I FURTHER CERTIFY that the foregoing is,</p> <p>7 to the best of my ability, a true and accurate</p> <p>8 transcript of the testimony taken</p> <p>9 stenographically by me at the time, place, and</p> <p>10 date hereinbefore set forth.</p> <p>11 I FURTHER CERTIFY that I am neither a</p> <p>12 relative, employee, attorney nor counsel to any</p> <p>13 of the parties to the action, and that I am</p> <p>14 neither a relative nor employee of such attorney</p> <p>15 or counsel and that I am not financially</p> <p>16 interested in the action.</p> <p>17 _____</p> <p>18 Professional Court Reporter</p> <p>19 Kimberly Pepper</p> <p>20</p> <p>21 (The foregoing certification of this transcript</p> <p>22 does not apply to any production of the same by</p> <p>23 any means, unless under the direction, control</p> <p>24 and/or supervision of certifying reporter.)</p>	